

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**FRANK D. MCCOLLUM, III, #2021347, §
Plaintiff, §
§
v. § CIVIL CASE NO. 3:18-CV-2351-N-BK
§
§
GRACIE G. LEWIS, et al., §
Defendants. §**

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. Plaintiff filed objections, and the Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. The objections are overruled, and the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

IT IS THEREFORE ORDERED that that this action is summarily **DISMISSED WITH PREJUDICE** as frivolous until such time as Plaintiff satisfies the conditions set forth in *Heck*. *See* 28 U.S.C. § 1915(e)(2)(B); *DeLeon v. City of Corpus Christi*, 488 F.3d 649, 657 (5th Cir. 2007) (“A preferred order of dismissal in *Heck* cases decrees, ‘Plaintiffs claims are dismissed with prejudice to their being asserted again until the *Heck* conditions are met.’” (citing *Johnson v. McElveen*, 101 F.3d 423, 424 (5th Cir. 1996)).

This dismissal will count as a “strike” or “prior occasion” within the meaning of 28 U.S.C. § 1915(g).

The Court prospectively **CERTIFIES** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). In support of this

certification, the Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions, and Recommendation. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous.

Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983).¹ In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. *See Baugh*, 117 F.3d at 202; FED. R. APP. P. 24(a)(5).

SO ORDERED this 26th day of October, 2018.



UNITED STATES DISTRICT JUDGE

¹ Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order. A timely notice of appeal must be filed even if the court certifies an appeal as not taken in good faith.